
Late
Amnesty

Center for Human Rights & Constitutional Law

**256 S. Occidental Blvd.
Los Angeles, CA 90057
213/388-8693
fax: 213/386-9484**

FAX COVER SHEET

Confidential Advisory: Unless otherwise indicated or obvious from the nature of the transmittal, the information contained in the facsimile message may be attorney privileged and confidential information intended for the use of the individual or entity named above. Therefore, if the reader of this message is not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error or are not sure whether it is privileged, please immediately notify us by collect telephone, and return the original message to us at the above address via the U.S. Postal Service at our expense. Thank you.

To: John Podesta

From: Peter A. Schey

Date: 9/28/56

Time: 11:35:20 PM

No. of pages (including this cover sheet):

Fax: (202) 456-2883

5

Fax message:

CENTER FOR HUMAN RIGHTS AND CONSTITUTIONAL LAW
Foundation

256 S. OCCIDENTAL BOULEVARD
LOS ANGELES, CA 90057
Telephone: (213) 388-8693 Facsimile: (213) 386-9484

December 15, 2000

David W. Ogden, Esq.
Assistant Attorney General
Civil Division
U.S. Department of Justice
950 Pennsylvania Ave. NW
Washington DC 20530

Urgent



Mary Ann Wyrsh
Acting Commissioner
Immigration and Naturalization Service
425 I Street NW
Washington DC 20536

Via telecopier & overnight mail

Re: *Catholic Social Services, Inc., v. Reno, et al.*

Dear Mr. Ogden and Ms. Wyrsh:

We write as class counsel on behalf of the 250,000 1982 amnesty applicants in *Catholic Social Services v. Reno* (CSS) and 150,000 applicants in *Newman v. INS*. We are respectfully requesting that the parties immediately confer (1) to discuss procedures and a time line for renewing plaintiff class members' employment authorization documents and immediate notification to the field that class members prima facie eligible for legalization should not be arrested or removed from the country; and (2) to explore settling this litigation in its entirety.

1. Reinstatement of interim relief in CSS

On November 21, 2000, the Ninth Circuit Court of Appeals, sitting *en banc*, refused to order dismissal of CSS on jurisdictional grounds as sought by the Immigration and Naturalization Service (INS). The court instead affirmed the district court's ordering the INS to issue class members stays of deportation and temporary employment authorization pending adoption and implementation of a final remedy for eligible class members.

The court of appeals' decision provides that the preliminary injunction is now in force. Slip Op. at 14997 ("the district court did not err in granting the preliminary injunction *now in force*..." (emphasis added)); *see also, Id.* at 14993 ("That the preliminary injunction *is still in force and effect* is not a result of overreaching in the district court's order, but rather of the fact that the [INS] chose to appeal rather than comply" (emphasis added)). The preliminary injunction (1) requires the Immigration and Naturalization Service (INS), to reissue temporary employment authorization to about 50,000 CSS-class members, and (2) prohibits the INS from arresting or deporting class members from the United States pending the district court's approval of a final remedial order.

The circuit court's *en banc* opinion makes clear that the district court acted properly in granting plaintiffs interim protection from joblessness and deportation:

David W. Ogden, Esq., Assistant Attorney General
Mary Ann Wyrsh, INS Acting Commissioner
December 15, 2000
Page 2

We affirm the district court's grant of preliminary injunction relief to this class. The merits of their case were decided in their favor in the earlier litigation, both by the district court in *CSS I* and by this court in *CSS II*. ... The class has thus clearly demonstrated a likelihood of success on the merits. It is equally clear that *the class would suffer immediate and severe hardship if its members were deported or denied work authorization pending final determination of their suits*. Accordingly, we hold that the district court acted within its discretion in issuing an order protecting, on an interim basis, the entire class certified in the earlier litigation ...

Slip.Op. at 14992-93 (emphasis added).

As you are no doubt aware, H.R. 4690, the FY 2001 appropriations act for Commerce, Justice, State and related agencies, which includes the Legal Immigration Family Equity Act ("LIFE"), has been passed by Congress and will soon, perhaps even today, become law. The LIFE Act repeals § 377 of the *IRAIRA* and allows all *CSS, Newman and Zambrano* class members to have legalization applications adjudicated, whether they were "front-desked" or not. The new enactment will also eliminate the temporary resident step for class members, thus allowing them to apply immediately for permanent residence.

President Clinton has publicly "welcomed" the remedial legislation while adding that it *did not go far enough* in providing a remedy in light of the harm suffered by "the victims of the INS' misinterpretation of the law." In the Administration's view, it is now necessary to "fully correct the [INS'] flawed implementation of the 1986 legalization program under the Immigration Reform and Control Act of 1986." This is precisely the position the plaintiffs and the courts have taken for some 12 years.

Nevertheless, despite (i) the Ninth Circuit's decision in favor of *CSS* class members; (ii) the White House's declared support for a full and fair remedy for plaintiffs and class members; and (iii) the imminent passage of legislation providing specific benefits for class members, defendants have filed a motion asking that the court of appeals stay its mandate. The basis for this motion is that should mandate issue would again be entitled to critically important interim relief from arrest and deportation that was in place for about ten years until revoked by the INS approximately twenty-four months ago.

Given the court of appeals' decision, the Administration's recently announced position supporting a full and fair remedy for the amnesty class, and Congress's passage of legislation ordering defendants to process class members for legalization (essentially the same thing the courts ordered some 12 years ago); we cannot understand why the INS would wish to persist in arresting and removing class members and in denying them the right to engage in lawful employment.

Continuing to deny temporary work authorization and stays of deportation for class members who the INS has determined are *prima facie* eligible for legalization converts this litigation into little more than a race pitting the INS' ability to expel persons from the United States against the courts' ability to identify eligible class members and grant final relief on their behalf, and the implementation of a new law protecting class members that has the full support of Congress and the White House. That is a sporting approach to justice all should reject.

Please contact us as soon as possible to let us know defendants' position on *immediately* complying with the Ninth Circuit Court of Appeals' en banc decision affirming the right of class members who have established *prima facie* eligibility for legalization to interim relief. Unless.

David W. Ogden, Esq., Assistant Attorney General
Mary Ann Wyrsh, INS Acting Commissioner
December 15, 2000
Page 3

defendants are prepared to promptly comply with the decision of the court of appeals, we will be compelled to seek emergency relief from either the court of appeals or the district court. We request an urgent telephonic meeting so that the parties may confer regarding the reinstatement of relief for plaintiffs and class members. If defendants agree to reinstate interim relief consistent with the court of appeals' decision, plaintiffs will agree not oppose a temporary stay of the Ninth Circuit's mandate.

2. Proposed non-binding mediation

We believe it is time that this litigation be brought to a speedy negotiated conclusion. We propose that a resolution acceptable to the parties and the courts be explored through the offices of the Ninth Circuit's Mediation Office. This program has previously facilitated prompt resolution of complex class action cases, and we believe would be helpful to the parties' ability to resolve the amnesty cases.

These cases have been litigated for over 12 years. In addition to the November 21 court of appeals' *en banc* decision, three previous Ninth Circuit decisions have rejected defendants' jurisdictional positions. In 1993 the Supreme Court likewise rejected defendants' jurisdictional arguments, identified certain class members who clearly possessed standing, and left it to the lower courts to identify "substantial cause" class members with standing, which they did.

The record in this case clearly shows that INS was fully aware of the 1986 legislative language specifically allowing brief travel abroad without disqualifying applicants from legalization. The agency through Attorney General Ed Meese wrote to the Senate Subcommittee and argued in favor of changing the language of the bill to disqualify applicants who had briefly traveled abroad without INS "advance parole." *Congress rejected this proposal.* The language of the final bill, as it had all along, allowed brief travel without requiring "advance parole." Undeterred, the INS issued regulations embracing the agency's rejected position, rather than implementing the language adopted by Congress. As the lower courts found, this was not a reasonable "misinterpretation" of the law. The INS knew exactly what it was doing, and was forced to change its rules only when the federal courts intervened with injunctions. Because of later abandoned defenses at first raised by the INS, the injunctions were not issued until after the application period ended, and the INS had not only deemed plaintiffs and class members ineligible for legalization, but also ineligible to even "apply" for legalization. Everyone now agrees INS's rules were invalid.

Now, Congress and the White House clearly support full and fair relief for *CSS* and *Newman* class members, and class members are about to become the beneficiaries of significant remedial legislation. These developments strongly mitigate in favor of immediate efforts to conclude these cases. The time has come to resume settlement discussions aimed at concluding these cases in light of the court of appeals' *en banc* decision and legislation about to be signed into law.

The draft settlement agreement previously discussed by the parties, combined with the LIFE Act and the court of appeals' recent decision provide a framework for settlement discussions that could quickly end these 12-year-old cases and lead to a prompt remedy for class members. INS officers have other important tasks to perform, and the sooner a remedy can be executed the better for all concerned.

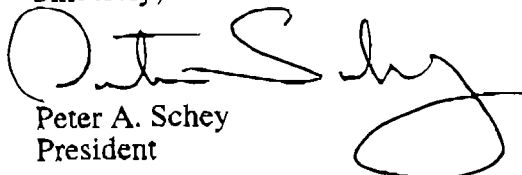
Settlement talks were previously terminated by defendants only because plaintiffs would not agree to limit the scope of the class definition in a manner which excluded most class members from relief. The Congress, the White House and the court of appeals all now agree that the class

David W. Ogden, Esq., Assistant Attorney General
Mary Ann Wyrsh, INS Acting Commissioner
December 15, 2000
Page 4

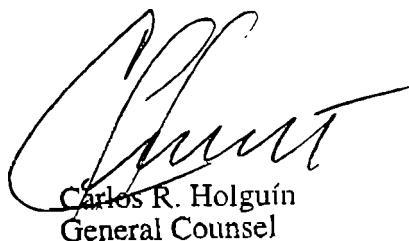
may be more generously defined so as to maximize the number of class members eligible for relief. In light of these developments a settlement should be easily within reach.

Please contact us as soon as possible to let us know (1) whether defendants may be willing to submit this case to a non-binding mediation program supervised by the court of appeals in order to explore a final settlement, and (2) defendants' position on immediately complying with the Ninth Circuit Court of Appeals' en banc decision affirming interim relief to class members who establish *prima facie* eligibility for legalization.

Sincerely,



Peter A. Schey
President



Carlos R. Holguín
General Counsel

ccs: John Podesta
Chief of Staff to the President
The White House
Washington DC 20500

Anthony M. Norwood
Office of Immigration Litigation
P.O. Box 878 Ben Franklin Station
Washington, DC 20044

M. Jocelyn Lopez Wright, Esq.
Office of Immigration Litigation
P.O. Box 878 Ben Franklin Station
Washington, DC 20044

Interested individuals and organizations

MEMORANDUM

TO: MARIA ECHAVESTE
FROM: IRENE BUENO
RE: MEETING ON LATE AMNESTY CASES – Wednesday, November 29, 2000
at 11:00 am in your office

PURPOSE: You are meeting with Beth and Dawn to discuss the recent Court of Appeals decision and Peter Shey's recent letter to the President and Lott asking that DOJ resume resettlement discussions of the pending cases and that Congress pass legislation to ease the legalization of the class of 1982. Attached is the letter and press release.

BACKGROUND: See attached backgrounder on the litigation and administrative action.

ATTENDEES: You
Beth
Dawn
Irene

Deadline for appealing - ?

Talk to Eric + Randy - can't interfere w/ our policy effort.

LATE AMNESTY

BACKGROUND

Litigation

The "late amnesty" cases involve claims by undocumented immigrants who did not successfully apply for legalization under the amnesty program created by the 1986 immigration law ("IRCA") before the program's deadline of May 1988. They assert that they were prevented or discouraged from applying in time by INS regulations implementing the amnesty program which prohibited anyone who had left the country even "briefly, casually, or innocently" without advance INS approval (the "advance-parole" requirement) from obtaining amnesty.

The INS "advance-parole" requirement was almost immediately challenged by the class of individuals who did not successfully apply for amnesty since, they claimed, it directly conflicted with IRCA. On an appeal from the Ninth Circuit, the Supreme Court eventually took the case and held that applicants who had been "front-desked" by an INS office, i.e., had taken affirmative steps to apply for amnesty and had been blocked from applying by the INS because of its "advance-parole" requirement, could challenge the lawfulness of the requirement. It then remanded to the lower courts in the Ninth Circuit to determine who belonged in the "front-desked" class and rule on the merits of their claims.

In 1996, while these lawsuits were pending, Congress passed IIRIRA, a provision of which (section 377) removed any "late amnesty" claim from the jurisdiction of the courts unless a claimant could show that he or she had actually timely filed an application or attempted to file a completed application and application fee and been turned away by the INS. In short, this legislation defined the limits of the class of individuals who can be considered to be "front-desked."

Since IIRIRA was passed, the "late amnesty" litigation has become ever more complex, particularly in the Ninth Circuit. However, in essence, the plaintiffs' complaint continues to challenge the lawfulness of the initial INS "advance-parole" requirement and also now challenges the constitutionality of section 377 of IIRIRA to the extent that it prevents non-"front-desked" individuals from bringing any suit to obtain relief.

On November 21, 2000, the Ninth Circuit Court of Appeals in a 7-5 ruling held, among other things, that the plaintiffs could pursue both their case challenging the INS "advance-parole" regulation and their challenge to the constitutionality of section 377. The Circuit Court went on to hold: (a) that the district court was within its discretion in granting a preliminary injunction barring the INS from removing any "front-desked" individuals or rescinding their work authorizations while their claims are heard and (b) the district court erred in refusing to grant a preliminary injunction protecting those individuals who were not "front-desked" but who are challenging the constitutionality of section 377 while their claims are heard. It then remanded to the district court for review of the merits of the case.

Administrative Action

Since 1996, the INS has made it clear that those individuals who believed they were "front-desked" as defined by section 377 may submit their front-desking claims and the INS will review them. For those immigrants who were not front-desked, the Department explored whether they had the administrative authority to provide relief to these individuals. However, the Department determined that it was unable to offer any further relief and recommended that the Administration pursue legislative change.

We have proposed legislation to change the registry date from 1972 to 1982 to help individuals who were affected by this situation. The registry date change would allow individuals in the US since 1982 to adjust their immigration status provided they meet certain criteria whether or not they are members of the current "late amnesty" class action. This legislation is currently under consideration by Congress. Senator Hatch favors a provision which is included in the Commerce, Justice, State Appropriations bill which would only provide help to those members of the current "late amnesty" class action. The Administration has made it clear that we do not believe this legislation goes far enough and that we support a change in the registry date.

In light of the most recent decision in the Ninth Circuit, the lead plaintiffs' attorney, Peter Shey, sent a letter to the President asking that he order DOJ to resume settlement discussions with the litigants (see attached letter). Furthermore, Peter Shey sent the same letter to Senate Republican Leader Trent Lott urging him to pass pending legislation to allow these individuals to adjust their immigration status more easily.

We are meeting to discuss these developments and what, if any, response to provide to Mr. Shey's letter.



Peter Schey <pschey@earthlink.net>

11/22/2000 05:58:33 AM

Record Type: Record

To: See the distribution list at the bottom of this message

cc:

Subject: court of appeals rules for amnesty class members

CENTER FOR HUMAN RIGHTS AND CONSTITUTIONAL LAW
256 S. OCCIDENTAL BOULEVARD
LOS ANGELES, CA 90057
Telephone: (213) 388-8693 Facsimile: (213) 386-9484

November 21, 2000

President William Jefferson Clinton
The White House

Hon. Trent Lott, Hon. Tom Daschle,
Hon. J. Dennis Hastert, Hon. Richard A. Gephardt

Dear President Clinton and Distinguished Leaders of Congress:

The 400,000 amnesty applicants who are the subject of a proposed amendment to the Immigration and Nationality Act passed by Congress a few weeks ago as part of the appropriation bill for the Departments of Commerce, Justice and State, today won a major victory in the federal courts which we wish to bring to your attention.

In *Catholic Social Services, et al. v. Reno, et al.*, Case No. 98-16269, an en banc panel of the Ninth Circuit Court of Appeals today issued a long-awaited decision rejecting each of the Administration's arguments that the amnesty applicant class members have no right to judicial relief in their 12-year old legal struggle to have their long-pending amnesty applications adjudicated and to obtain temporary employment authorization and protection from deportation upon a showing of prima facie eligibility. This decision strongly increases the chances that thousands of immigrant families who have resided here since before 1982, and who were illegally turned away by the INS when they applied for "amnesty" under the 1986 law because they had briefly traveled abroad, will finally have their status legalized as the law intended. With this, its eighth loss in the federal courts in 12 years of litigation and countless INS appeals, all of which the INS declares has cost the taxpayers over \$40 million to date, we respectfully suggest the time has come for the Administration to direct its counsel to recommence settlement discussions with plaintiffs aimed at a prompt conclusion to the tortured treatment of thousands of amnesty class members. At the same time, as discussed below, the Court of Appeals' decision makes enactment of legislation as proposed by Congress all the more important. As the Court of Appeals says, "[t]his litigation has a long and

unhappy history.² Legislation would help bring that ³unhappy [litigation] history² to an end.

The full opinion of the Ninth Circuit Court of Appeals may be obtained through our webpage, www.centerforhumanrights.org. The decision is summarized below.

First, the Ninth Circuit en banc panel rejected the Administration's argument that the statute of limitations barred the Catholic Social Services case. The Court ruled as follows: ³Plaintiffs have at all times vigorously pursued this litigation. A class of which they were members originally filed suit immediately after the INS' promulgation of its [travel] policy. A seventh amended complaint was filed promptly to satisfy the Supreme Court's ripeness holding in *CSS III* ... Only when the district court's decision based on the seventh amended complaint was on appeal [by the INS] ... did Congress enact S 377 of IIRIRA ... However, rather than remand to the district court to allow amendment of the complaint to deal with the new reality that had been created by the enactment of S 377 while the case was on appeal, [at the urging of the INS] a panel of this court in *CSS V* remanded with instructions to dismiss the complaint ... But because the panel ordered the dismissal of the action in *CSS V*, plaintiffs were obliged to file a new action rather than allowed to continue their pending action ... We hold that ... the statute of limitations was tolled during the pendency of the first class action for the class members ... in the action now before us, and that plaintiffs in this case may aggregate their individual actions into a class action.²

Second, the Court of Appeals rejects the position of the Administration that 8 U.S.C. § 1252(f)(1), deprives the district court of jurisdiction to issue relief to class members. As the Court of Appeals found, this provision limits the lower federal courts' ³jurisdiction ... to enjoin or restrain the operation of the provision of part IV of this subchapter.² However, the district court in this case issued the preliminary injunction under 8 U.S.C. § 1255a, located in part V, ³Adjustment and Change of Status.² Therefore, ³by its terms, the limitation on injunctive relief [in section 1252(f)(1)] does not apply to the preliminary injunction granted by the district court.²

Third, the Court of Appeals rejected the Administration's position that § 242(g) of the INA limits the federal court's jurisdiction to grant a remedy for class members. Section 242(g) provides ³no court shall have jurisdiction to hear any ... claim by ... any alien arising from the decision ... by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter.² The Court of Appeals agreed that § 242(g) does not bar the plaintiffs' claims which do not challenge any decision of the Attorney General ³to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter.² Instead, plaintiffs raise statutory and constitutional claims about the denial of their right to apply for legalization.

Fourth, the Court of Appeals rejected the Administration's position that class members whose judicial remedies were cut-off by § 377 of the 1996 amendments to the INA could not challenge § 377 itself on constitutional grounds. The Court of Appeals decided that ³[t]o state that § 377 precluded an equal protection challenge to itself is to state a legal impossibility, for a statute cannot treat one group less favorably than another and, at the same time, insulate itself from constitutional attack by statutorily

forbidding the disfavored group from bringing an equal protection challenge to that very statute.² The Administration's position that a statute may do so -- entirely cutting off constitutional review -- has been rejected by almost every constitutional scholar and every federal appeals court which has ever addressed the question. The Administration should give this question serious consideration before deciding whether to present its extreme position in a petition for further review before the U.S. Supreme Court. As a result of the Ninth Circuit's decision, the Plaintiffs may properly now proceed to trial on their constitutional claims.

Fifth, the Court of Appeals turned to the merits of the lower court's nationwide injunction, which at the request of the Administration was stayed by a 2-1 decision of a Ninth Circuit panel of judges in 1998. Rejecting the Administration's position, the Court of Appeals decided that the lower court's injunction was properly granted, was not abuse of discretion, and should be reinstated. The Court of Appeals held that the ³class has ... clearly demonstrated a likelihood of success on the merits. It is equally clear that the class would suffer immediate and severe hardship if its members were deported or denied work authorization pending final determination of their suits. Accordingly, we hold that the district court acted within its discretion in issuing an order protecting, on an interim basis, the entire class certified in the earlier litigation until such time as the subset that comprises the currently certified class can be identified and protected ... That the preliminary injunction protecting the entire earlier class is still in force is not a result of over-reaching in the district court's order, but rather of the fact that the government chose to appeal rather than comply.²

Sixth, the Court of Appeals agreed with every other judge who has to date reviewed and rejected the Administration's position that the requirement in § 377 of presentation of a completed application and fee to a legalization officer should not be interpreted to include presentation of applications² to non-profit Qualified Designated Entities (QDEs) which were authorized by the law to receive application forms. The Court of Appeals concluded ³aliens who filed or attempted to file a completed application and fee with a QDE ... are properly included in this class.²

Finally, again rejecting the Administration's position, the Court of Appeals ruled that temporary protection could be extended by the lower court to ... class members challenging section 377 on constitutional grounds. The lower court has already expressed its view that such relief should be extended pending a final judicial resolution of plaintiffs' constitutional claims. As stated above, this includes at least class members who were turned away by the INS and non-profit groups with which the INS contracted to accept application even though they did not have complete applications in their hands.

This decision makes clearer than ever before that the amnesty class members deserve and should be extended a prompt remedy for the concededly illegal manner in which they were turned away by the INS during the 1987-88 application program because they had briefly traveled abroad. As counsel for the plaintiff class, we have urged the Administration for several years to recommence settlement efforts (which the Administration suspended about three years ago). There is no legal or principled reason for the Administration to continue to stand as the only obstacle to a solution, one the courts and now even the Congress have called for. At the same time, the

decision of the Court of Appeals in favor of the plaintiffs suggests that legislation as proposed by Congress will quickly, efficiently, and with enormous cost-savings, facilitate a conclusion to the long-pending pending amnesty cases. The proposed legislation in LIFA would avoid several more years of litigation over the constitutional rights of class members to a judicial remedy, eliminate the interim step of applying for temporary resident status before applicants may apply for permanent resident status, and avoid the need for applicants to prove continuous residence between 1988 and the present. As we have previously stated in correspondence to President Clinton and the Congressional leadership, we believe that nothing prevents the Administration from arriving at a fair settlement of the amnesty class action cases. Hopefully a combination of legislative and judicial actions will prompt the Administration to end its defenseless cycle of litigation aimed at denying the amnesty class members a fair and just resolution of their claims. The fact that over 12 years ago the INS conceded that its travel rules (which barred eligible applicants from filing their applications) were invalid should further mitigate in favor of a prompt settlement of these cases.

We look forward to your views on this matter. Please let us know if you have any questions regarding the amnesty litigation cases.

Respectfully,

Peter A. Schey
President & Ex. Director

Carlos Holguin
General Counsel

ccs: Interested members of Congress, plaintiffs, class members, advocates.

 - att1.htm

Message Sent To: _____

"LIFA/amnesty e-Advocates" <pschey@earthlink.net>
"LIFA/AMNESTY ESUPPORT" <pschey@earthlink.net>
Maria Echaveste/WHO/EOP
Alejandro Perez <Alejandro.Perez@mail.house.gov>
Brian A. Barreto/WHO/EOP
Esther Olavarria <esther_olavarria@judiciary.senate.gov>
Mark D. Magana/WHO/EOP
Scott Deutchman <scott.deutchman@mail.house.gov>
Leon Buck <Leon.Buck@mail.house.gov>
Edward Ayoob <edward_ayoob@reid.senate.gov>
Senator Feinstein <senator@feinstein.senate.gov>
Senator Boxer <senator@boxer.senate.gov>
Richard Gephardt <gephardt@mail.house.gov>
"Rep. Howard Berman" <Howard.Berman@mail.house.gov>
"Rep. Xavier Becerra" <Ca30@legislators.com>
"Rep. Lucille Royball-Allard" <Ca33@legislators.com>
"Rep. Martin Frost" <Tx24@legislators.com>
"CSS/LULAC" <pschey@earthlink.net>
Amnesty Media <pschey@earthlink.net>



Peter Schey <pschey@earthlink.net>
11/21/2000 09:49:29 PM

Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: Press release: Court of Appeals Rules for Amnesty Applicants

CENTER FOR HUMAN RIGHTS AND CONSTITUTIONAL LAW
256 S. OCCIDENTAL BOULEVARD
LOS ANGELES, CA. 90057
Telephone: (213) 388-8693
Facsimile: (213) 386-9484 Modem: (213) 386-3806

FOR IMMEDIATE RELEASE

FEDERAL COURT OF APPEALS RULES IN FAVOR OF HUNDREDS
OF THOUSANDS OF ³AMNESTY² APPLICANTS

Press conference: Wednesday, November 22, 2000, 10:30 AM (PST)
Place: Center for Human rights and Constitutional Law
256 S. Occidental Blvd (corner 3rd Street)
Los Angeles, Ca. 90057
Contacts: Class counsel Peter Schey (323) 251-3223, &
Carlos Holguin (213) 388-8693 ext. 109

On November 21, 2000, an en banc panel of 11 judges of the Ninth Circuit Court of Appeals in San Francisco, California, issued a decision hundreds of thousands of immigrants had waited for since the case was argued in March. The Court of Appeals' decision rejected an appeal by the Attorney General in a case involving 400,000 immigrant families who have resided in the U.S. since before 1982 and alleged they were illegally turned away by the INS when they sought to apply for ³amnesty² during the 1987-88 one-year amnesty program because they had briefly traveled abroad. In two class action cases filed by the Center for Human Rights, the AFL-CIO, Catholic Social Services of Sacramento, CA, the United Farm Workers Union and other plaintiffs, the lower courts held in 1988 that INS' travel rules were illegal, decisions the agency accepted and based upon which it rescinded its travel rules. However, for the past 12 years the INS has fought the power of the federal courts to grant a remedy to hundreds of thousands of class members involved in these cases. In 1998 the INS convinced two of three members of a panel of Ninth Circuit judges to order the Catholic Social Services v. Reno case dismissed based on a 1996 provision enacted by Congress removing the jurisdiction of the federal courts over most class members' claims. However, the Catholic Social Services plaintiffs promptly filed a new lawsuit, challenging the law enacted by Congress as a violation of their constitutional right to access the courts. When U.S. district judge Lawrence Karlton issued a nationwide injunction in June 1998 protecting class members in the new lawsuit, the INS appealed to the Ninth Circuit Court of Appeals and obtained a temporary stay of the injunction. The same two Court of Appeals judges who ordered

dismissal of the first Catholic Social Services case then ordered the second case dismissed. Their decision was reviewed and reversed by 11 judges of the Court of Appeals which issued its decision today.

Peter Schey, lead counsel for plaintiffs, stated today: "This decision will require the INS to issue tens of thousands of temporary work permits to class members nationwide, and may lead to several hundred thousand class members having their applications for legalization adjudicated after fighting for that result for over 10 years. This decision also reaffirms that there is a constitutional right of access to the courts, a right of profound importance to all persons who have suffered constitutional harm at the hands of the Government and turn to the courts for a remedy. The Administration's position that the courthouse doors may be arbitrarily locked to victims of constitutional violations --whether citizens or immigrants--was thoroughly rejected by the Court of Appeals today."

--30--

Message Sent To:

"LIFA/amnesty e-Advocates" <pschey@earthlink.net>
"LIFA/AMNESTY ESUPPORT" <pschey@earthlink.net>
Maria Echaveste/WHO/EOP
Alejandro Perez <Alejandro.Perez@mail.house.gov>
Brian A. Barreto/WHO/EOP
Esther Olavarria <esther_olavarria@judiciary.senate.gov>
Mark D. Magana/WHO/EOP
Scott Deutchman <scott.deutchman@mail.house.gov>
Leon Buck <Leon.Buck@mail.house.gov>
Edward Ayoob <edward_ayoob@reid.senate.gov>
Senator Feinstein <senator@feinstein.senate.gov>
Senator Boxer <senator@boxer.senate.gov>
Richard Gephardt <gephardt@mail.house.gov>
"Rep. Howard Berman" <Howard.Berman@mail.house.gov>
"Rep. Xavier Becerra" <Ca30@legislators.com>
"Rep. Lucille Royball-Allard" <Ca33@legislators.com>
"Rep. Martin Frost" <Tx24@legislators.com>
"CSS/LULAC" <pschey@earthlink.net>
CSS e-group <lateamnesty@onelist.com>

IMMIGRATION IMPLEMENTATION MEETING

December 20, 2000

- **INTRODUCTION**
- **SECTION 245(i)**
- **LATE AMNESTY/ FAMILY UNITY**
- **NACARA/HRIFA TECHNICALS**
- **V AND K VISAS**
- **PUBLIC OUTREACH CAMPAIGN**
- **NEXT STEPS**

FOR IMMEDIATE RELEASE

Friday, December 15, 2000

CONTACT:

Matthew Tallmer
AILA Public Affairs Manager
202-216-2404
mtallmer@aila.org

**MISSED OPPORTUNITIES & FUNDAMENTAL CHOICES:
AILA on Immigration Deal**

WASHINGTON, D.C. -Jeanne A. Butterfield, the Executive Director of the American Immigration Lawyers Association (AILA), issued the following statement on the immigration agreement finalized today between the White House and Congress:

"We are pleased that this agreement will provide relief to hundreds of thousands of people who have contributed much to this country. We wish to commend: the White House and Deputy Chief of Staff Maria Echaveste; the Congressional Hispanic Caucus, especially Representatives Lucille Royball-Allard (CA), Luis Gutierrez (IL) and Robert Menendez (NJ); and other Democratic Congressional leaders, especially Senators Edward Kennedy (MA) and Tom Daschle (SD), and Representatives Dick Gephardt (MO), Howard Berman (CA) and John Conyers (MI). They deserve the credit for achieving this agreement against overwhelming odds. We also commend the immigrants and immigration advocates across this nation who, along with the White House and our Congressional allies, pushed recalcitrant Republican leaders to the bargaining table.

"Republican leaders missed an opportunity to correct some grave injustices, address major needs in immigrant communities nationwide, and follow the lead of the pro-immigration members of their own caucus like Representatives Lincoln Diaz-Balart (FL) and Chris Smith (NJ), and Senators John McCain (AZ) and Spencer Abraham (MI).

"Instead, Republican leadership refused to permit the full restoration of Section 245(i) (opting instead for a four-month grandfathering), that would keep families together and eliminate roadblocks in the way of eligible people becoming legal, and which the Republican-controlled Senate twice passed. They refused to include in the final deal the bipartisan H.R. 5062, which provides limited due process relief for legal permanent residents being deported for minor offenses committed long ago, and which passed the House without a single dissenting vote. They also refused to discuss NACARA equity, which is supported by such Republican lawmakers as Senator McCain and Representative Chris Smith (NJ), among others, and thus have further delayed the fair resolution of the status of Central Americans, Haitians and others fleeing civil strife who have been mistreated under our laws for nearly 20 years.

"The recent presidential campaign was marked by compassionate conservative rhetoric from the Republican Presidential candidate and now President-elect George Bush, pro-immigrant language in the Republican Party platform, and the party's public strategy of appealing to immigrant and minority voters. This agreement does not measure up to either the President-elect's rhetoric or the Republican strategy.

"After reading the details of this agreement, we are left wondering: Will immigrants be faced with additional years of rhetoric but no action on their issues? Will Governor Bush as President turn his pro-immigration rhetoric into reality? Does the restrictionist wing, headed by Representative Lamar Smith (R-TX), speak for the Republican Party on immigration?

"Immigrant communities and immigration supporters nationwide will continue to advocate for, among other measures, the complete restoration of Section 245(i), NACARA parity for all fleeing civil strife, and the restoration of due process for legal permanent residents. These issues top the agenda of our communities and supporters who will continue to advocate for these and other pro-immigration measures until they become law. We call on President-elect Bush and the Republican-controlled Congress to positively address these issues in the 107th Congress. Immigrants nationwide will be closely watching."

Legal Immigration and Family Equity Act (LIFE Act)

SUMMARY

(Based on drafts from Congressional offices)

REAUTHORIZES SECTION 245(i) UNTIL APRIL 30, 2001.

Under the LIFE Act, the “grandfather” clause of Section 245(i) is extended from January 14, 1998 until April 30, 2001. As a result, any beneficiary of an immigrant visa petition or labor certification application filed before April 30, 2001 will be able to apply for adjustment of status under Section 245(i) if necessary. However, for any applications filed after January 14, 1998 (but before April 30, 2001) the applicant must prove they were physically present in the United States on the date of the enactment of the LIFE Act in order to be eligible for Section 245(i) adjustment of status.

CREATES A NEW TEMPORARY VISA FOR SPOUSES AND MINOR CHILDREN OF LEGAL PERMANENT RESIDENTS AWAITING AN IMMIGRANT VISA

In order to address the severe backlogs on the availability of visas for families, the LIFE Act provides a remedy for the spouses and minor children of legal permanent residents. Under current law, because these individuals are intending immigrants, there is no way for them to legally come to the United States, even for a short visit. By creating a new “V” visa, the law grants some family members a legal status and work authorization in the United States.

- **New “V” Visa:** Allows the spouses and minor children of lawful permanent residents (the Family 2A category only) who have been waiting more than 3 years for a green card, to enter the United States and be granted work authorization. In order to qualify the spouse or child must meet the following criteria:
 - ✓ **A green card petition was filed on or before enactment of the law.** The sponsoring permanent resident must already have filed a green card petition for the spouse or minor child with the INS as of the date that the LIFE Act becomes law.
 - ✓ **Must have been waiting at least 3 years.** The petition must either have been pending with the INS for three years or more or, if the petition has been approved, the spouse or minor child must have been waiting at least three years for their “turn” in the green card line.
- **Waiver of Grounds of Inadmissibility and Adjustment of Status.** The law provides that periods in the United States in unauthorized status will not prevent someone from obtaining a V visa (§212(a)(9)(B) shall not apply). The law also would allow individuals already in the United States to apply to “adjust status” to the new V category, even if they are in the United States unlawfully (§212(a)(6)(A), (7), and (9)(B) shall not apply). With the reinstatement of Section 245(i), V visa holders will be eligible to adjust their status to legal permanent resident under that section.

CREATES A NEW TEMPORARY STATUS FOR SPOUSES OF U.S. CITIZENS AWAITING AN IMMIGRANT VISA

In order to address the severe backlogs on the processing of petitions for family members, the LIFE Act creates a remedy for the spouses of United States citizens who are outside of the United States

and waiting for the approval of an immigrant petition. Any minor children who are seeking to accompany the spouse are also provided protection. By expanding the eligibility for a K visa, the new law will allow the spouse of a U.S. citizen to enter the United States and obtain work authorization while waiting for the petition to be approved.

- **Expansion of Fiancée Temporary Visa Category.** The bill expands the use of the “K” visa, which currently allows fiancées of U.S. citizens to enter the United States for the purposes of getting married, to be used by spouses of U.S. citizens who are already married and are waiting outside of the United States for the approval of their immigrant visa petitions. Any minor children who are accompanying the spouse can be included in the petition. In order to qualify the spouse and minor children must meet the following criteria:
 - ✓ **An immigrant visa petition must be previously filed.** The law requires that the U.S. citizen file an immigrant petition before a visa can be issued to the spouse abroad. The K visa will allow the spouse abroad to enter the U.S. and await the approval of the petition.
 - ✓ **Recipient of the K visa must be outside of the United States.** The law only authorizes the visa to be issued by a consular officer outside of the United States. There is no provision to “adjust status” for someone already in the United States in an unlawful status.
 - ✓ **The K visa petition must be filed in the United States.** The petition for the K visa must be filed in the United States by the U.S. citizen spouse.
 - ✓ **Must have a valid non-immigrant visa at the time that the K visa is issued.** Where the marriage to the U.S. citizen occurred outside of the United, the K visa recipient must have a valid non-immigrant visa issued by the consulate where the marriage occurred.
- **Available to current and future applicants.** The bill provides that this new K status is available both to individuals with currently pending green card petitions and future applicants.
- **Work Authorization.** Current law provides that K visa holders are permitted to work in the United States. This provision would apply to these new K nonimmigrants as well.

ALLOWS FOR THE ADJUSTMENT OF STATUS OF CERTAIN LATE LEGALIZATION CLASS MEMBERS

Who Is Eligible for Relief:

The LIFE Act makes some modifications to the provisions of the 1986 amnesty (Section 245A of the INA) and provides an opportunity to apply for this relief only to those people who were part of certain class action lawsuits against the INS for their improper handling of the 1986 amnesty program. To qualify a person must prove that he or she:

- Filed a written claim, before October 1, 2000, for class membership in *CSS v. Meese*, *LULAC v. Reno*, or *INS v. Zambrano* (three of the various class action lawsuits filed against the INS for their improper handling of the 1986 amnesty program).
- Entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status through May 4, 1988.
- Was continuously physically present in the United States beginning on November 6, 1986 and ending on May 4, 1988 (brief, casual and innocent absences will not interrupt a finding of continuous physical presence).

- Files an application for adjustment of status with the Attorney General within one year of the date on which the Attorney General issues final regulations to implement the new law. The Attorney General is required to issue those regulations within 120 days after enactment.
- Has not been convicted of any felony or three or more misdemeanors, has not assisted in the persecution of any person (on account of race, religion, nationality, political opinion or membership in a particular social group), and is registered or registering under the Military Selective Service Act (if required to do so under that Act).
- Is not inadmissible to the United States as an immigrant. The Attorney General may (for humanitarian purposes, to assure family unity, or when it is in the public interest) waive any of the grounds of inadmissibility except those relating to criminals, drug offenses, security grounds, and public charge grounds. In addition, the Attorney General may grant a waiver of the grounds of inadmissibility related to aliens seeking admission after previous removal and aliens present after previous immigration violations.
- Is able to pass the naturalization exam (relating to an understanding of basic civics and the ability speak, read, and write ordinary English), or show that they are satisfactorily pursuing a course of study (recognized by the Attorney General) to achieve such an understanding of English and civics.

Relief Granted Under the Law:

- Eligible applicants will apply directly for permanent residence, rather than for temporary resident status.
- The Attorney General is required to establish a process under which an alien who has become eligible to apply for adjustment of status as a result of the enactment of this law and who is not physically present in the United States may apply for such adjustment from outside of the country.
- Applicants who submit a prima facie application under this law are entitled to a stay of deportation, work authorization, and permission to travel while their application is pending.
- The limitation on judicial review under IIRAIRA (Section 377) will not apply to applicants under these modifications and they will be entitled to the same review allowed by the 1986 laws.
- Newly legalized persons will not be disqualified from receiving certain public welfare assistance. (Under the original Section 245A applicants were disqualified from certain assistance for 5 years after their application was filed). However, they may still be subject to restrictions based on the 1996 Welfare Reform Law.
- The confidentiality provisions of Section 245A (that generally prevent the information submitted on the application from being used for any purposes except criminal prosecution) will apply, except that information submitted by an applicant under the new law may be used in proceedings to rescind an adjustment of status.

GRANTS PROTECTION FROM DEPORTATION AND WORK AUTHORIZATION TO THE SPOUSES AND CHILDREN OF LATE LEGALIZATION APPLICANTS

Consistent with laws passed in 1990 to protect the family of legalization applicants who were already in the United States, the LIFE Act prevents the deportation of the spouses and minor children of a

person who is applying for late legalization under the new law. Also consistent with prior laws, these family members are eligible for work authorization

Who Is Eligible for Relief: To be eligible for benefits a person must prove that he or she is:

- The spouse or unmarried child of a person who is eligible for adjustment of status as a result of the late legalization provisions of the LIFE Act.
- Entered the United States before December 1, 1998 and resided in the United States on that date.
- Has not been convicted of a felony or three or more misdemeanors in the United States, has not assisted in the persecution of any person (on account of race, religion, nationality, political opinion or membership in a particular social group), or is otherwise not a danger to the community of the United States.

Relief Granted Under the Law:

- Eligible people will be protected from deportation for violations of status in the United States but will continue to be deportable for other grounds of deportation, including criminal activity.
- Eligible people will be entitled to work authorization in the United States
- If the applicant for benefits under the late legalization provisions of the LIFE Act is applying from outside of the United States, the Attorney General is required to establish a process by which eligible spouses and children may be paroled into the United States in order to obtain the benefits under the new law.

PROVIDES CERTAIN WAIVERS AND PROTECTIONS AGAINST DEPORTATION FOR APPLICANTS UNDER NACARA AND HRIFA

Waiver of certain grounds of inadmissibility: In applications for adjustment of status under NACARA and HRIFA, the Attorney General may waive certain grounds of inadmissibility relating to re-entry after a previous order of deportation or removal (§212(a)(9)(A) and (C)).

Protection from reinstatement of prior orders of deportation or removal: In applications for adjustment of status, for suspension of deportation, or for cancellation of removal as provided by NACARA or HRIFA, the Attorney General is prohibited from reinstating previous orders of removal or deportation in order to prevent those applications from being filed (§241(a)(5) shall not apply).

Availability of Motions to Reopen: NACARA and HRIFA applicants who become eligible to apply for adjustment of status, suspension of deportation, or cancellation of removal as a result of the changes contained in the LIFE Act will be able to file one Motion to Reopen any exclusion, deportation, or removal proceedings in order to apply for an adjustment of status under the Act. This right to file a Motion to Reopen exists notwithstanding any time and numerical limitations otherwise imposed under the Immigration and Nationality Act

FOR IMMEDIATE RELEASE

Tuesday, December 19, 2000

CONTACT:

Matthew Tallmer
AILA Public Affairs Manager
202-216-2404
mtallmer@aila.org

URGENT INFORMATION ABOUT IMMIGRATION DEAL

WASHINGTON, D.C. –A bill approved by Congress on December 15 contains several immigration-related provisions, including the partial reinstatement of Section 245(i), which allows eligible people to apply for green cards from within the U.S., rather than leaving the country and possibly being barred from re-entering for up to 10 years.

The American Immigration Lawyers Association (AILA) wants you and your readers to know three important things about the partial reinstatement of Section 245(i):

- People must have filed an immigrant petition with the INS or labor certification with the Department of Labor by April 30, 2001;
- They must show they were **physically present in the United States on the day the bill is signed by the President**.
- We do not know when the President will sign the measure, but we know that he must do so by midnight on December 21, 2000. Thus, the President can sign the bill anytime between now and December 21.

What does all this mean?

That people eligible to apply for green cards under Section 245(i) can do so without leaving the country and being separated from their families, communities and employers. However, Section 245(i) does not grant work authorization or provide protection from deportation.

To take advantage of this new opportunity to use Section 245(i), people must be able to prove that they are physically present in the U.S. the day the bill is signed. We strongly advise people who want to take advantage of Section 245(i) to remain in the United States.

We also advise people to discuss their potential eligibility with an immigration attorney. If people do not have an immigration attorney, AILA can refer them to one in their area. Call AILA's Lawyer Referral Service at 800-954-0254.

United States Senate
Committee on the Judiciary
Subcommittee on Immigration
Senator Edward M. Kennedy

520 Dirksen Senate Office Building
Washington, DC 20510
Phone: (202) 224-7878
Fax: (202) 228-0464

FAX MEMORANDUM

TO:

~~Frank Abate~~ Irene

FAX:

~~456-5587~~ ~~574-9333~~ 1907 456-~~8881~~

FROM:

Esther

DATE:

12/18/00

NUMBER OF PAGES, INCLUDING COVER SHEET

8

If there are problems with this fax transmission, please call (202) 224-7878

Message:

Here is a copy of EMK's Statement & the
joint memo of Abraham & EMK re: LIFE &
amendments. Call me when you get a
Arone & we can talk about implementation
ideas.

**The Legal Immigration Family Equity Act
December 15, 2000**

MR. KENNEDY. Mr. President, many of us have worked throughout this Congress to bring greater fairness to our immigration laws. The Legal Immigration Family Equity Act and its amendments are a constructive compromise worked out between members of both parties to address a number of the injustices in current law that have harshly affected many immigrant families. Included in the final legislative package are three provisions that will provide long overdue relief to valued members of our communities and their families..

First, the legislation includes the partial restoration of section 245(i) for individuals who are physically present in the U.S. by the date the legislation is enacted into law. Spouses, children, parents and siblings of permanent residents or U.S. citizens will now be able to adjust their status in the U.S. and avoid needless separation from their loved ones. Similarly, persons who benefit from employer-based petitions will also be helped by the restoration of section 245(i).

Second, this legislation will benefit many of the "late amnesty" class members who have been in legal limbo for close to 15 years. Their spouses and children will be able to remain in the United States until they become eligible for

permanent residence.

Finally, this legislation provides desperately needed technical corrections that will benefit persons eligible for relief under the Nicaraguan Adjustment and Central American Relief Act and the Haitian Refugee Immigrant Fairness Act.

Because these provisions were developed outside the usual committee process, they are not accompanied by committee reports on the background and purpose of the provisions. Therefore, as the Chairman and the Ranking Member of the Subcommittee on Immigration, Senator Abraham and I are submitting a detailed memorandum explaining the provisions.

Our action today is a significant step in the right direction, but this legislation is far from perfect. Critical pieces are missing.

We must continue to work for full parity for Central Americans, Haitians, and Liberians. It is unjust to treat refugees fleeing repression by left-wing dictators better than those fleeing repression by right-wing dictators. Congress must create a fair, uniform set of procedures for all of these refugees.

We also must continue to work for relief for permanent residents unfairly affected by the 1996 immigration law. The 1996 law contains some of the harshest provisions that Congress has enacted in many years. Their scope is sweeping. They hurt thousands of immigrants. They have taken immigrants away from their U.S. citizen families, without giving them even an opportunity to have their day in court. Next year, Congress must pass new legislation to correct the harsh provisions of these unfair laws.

It is also unfortunate that the legislation does not include far-reaching agreement on agricultural farmworkers. Senator Graham, Congressman Berman, and many others worked skillfully to achieve this agreement. They proposed an excellent compromise that would have benefitted both the agricultural workers and the farm owners.

These further reforms deserve high priority by the next Congress, and I look forward to working with my colleagues and with the administration of President-elect Bush to enact them into law.



**Joint Memorandum Concerning the Legal Immigration Family Equity Act of 2000
and the LIFE Act Amendments of 2000.**

The pending legislation contains certain immigration provisions worked out between members of both parties to further address certain issues addressed in the first instance in the Legal Immigration Family Equity Act of 2000, or LIFE Act, which is contained in the Commerce Justice State Appropriations bill being transmitted to the President. Because both the original LIFE Act and this legislation were developed outside the ordinary Committee process, they were not accompanied by the usual reports elaborating on the background and purpose of their provisions. This memorandum is accordingly submitted on behalf of the Chairman and Ranking Member of the Subcommittee on Immigration of the Senate Committee on the Judiciary to provide such elaboration in somewhat abbreviated form.

The original LIFE Act sought to address two problems. First, it sought to provide a new mechanism to address the problem created by the long backlog of immigrant visa applications for spouses and minor children of lawful permanent residents, who are currently having to wait many years for a visa to become available to them. Right now, many of these individuals are even precluded from visiting their spouse or parent in the United States on account of an administrative interpretation that the filing of their petition casts doubt on the bona fides of their applications for visitors visas, indicating that instead they are intending immigrants.

The LIFE Act creates a new temporary "V" visa under which these spouses (and their children) can come to the United States and wait for their visa here, if their immigrant visa petitions have been pending for more than three years. It also expands the criteria for "K" visas to include spouses and minor children of U.S. citizens. The purpose of the "V" and "K" visas is to provide a speedy mechanism by which family members may be reunited. We expect the Department of State and the INS to work together to create a process in keeping with the temporary nature of the visa that does not require potential beneficiaries to wait for months before their visas are approved. Like the existing Fiancé visa, the new "K" visa is not intended to be a prerequisite for the admission of citizen spouses, but a speedy mechanism for the spouses and minor children of U.S. citizens to obtain their immigrant visas in the U.S., rather than wait for long periods of time outside the U.S.

Second, the LIFE Act sought to correct past administrative mistakes that resulted in the wrongful denial of adjustment of status to hundreds of thousands of persons who should have qualified for permanent residence under the Immigration Reform and Control Act of 1986. It directs the Immigration and Naturalization Service (INS) to adjudicate the applications of individuals in two class action lawsuits on the merits, rather than

continuing to litigate whether they were timely filed.

The LIFE Act Amendments make three significant additions to the provisions in the LIFE Act. First, they delete the LIFE Act's special mechanism for "V" and "K" visa holders to adjust to lawful permanent residence, and instead add a new provision modifying section 245(i), a mechanism by which anyone eligible for an immigrant visa and for whom a visa is currently available can adjust his or her status to that of lawful permanent residence in the U.S., rather than have to return abroad for consular processing. That mechanism was reauthorized in 1996, but only for individuals who were beneficiaries of immigrant visa petitions or labor certification applications filed by January 14, 1998. The LIFE amendments move the date by which such petitions or applications must be filed forward in time to April 30, 2001.

They also add a new requirement that for all beneficiaries whose application was filed after January 14, 1998, the principal beneficiary must have been physically present in the U.S. on the date of enactment of the LIFE Act Amendments of 2000. The function of this last requirement is to make sure that the renewed availability of section 245(i) does not operate to encourage anyone to violate our immigration laws. Accordingly, it should be interpreted with common sense.

It may be difficult for an individual physically present on the day of enactment to establish his or her presence on that precise date to qualify for 245(i). The Immigration and Naturalization Service (INS) should therefore be flexible in the types of evidence it will accept to establish physical presence on the day of enactment. For example, the kind of evidence of physical presence INS ordinarily accepts demonstrating that the applicant has been physically present during a reasonable period preceding that date, accompanied by an affidavit or declaration that the person was present on the date itself, should ordinarily suffice. We also note that this new requirement is applicable only to principal applicants for 245(i), and not to derivatives, who continue to be allowed to "follow to join" if they otherwise qualify.

In order to ensure that persons who may benefit from this provision are aware of this legislation, we strongly encourage the INS to conduct a broad outreach program within the immigrant communities. Additionally, to ensure that all potentially eligible persons have an opportunity to qualify for 245(i), if necessary the INS should accept petitions and applications before the April 30, 2001 sunset date that do not contain all necessary supporting documents, and allow additional documents to be filed after the deadline.

Second, the legislation adds the members of a third class action law suit, *Zambrano v. INS*, to those covered by the LIFE Act's provisions concerning adjustment

of status under the Immigration Reform and Control Act of 1986 (IRCA). We note that persons eligible for adjustment pursuant to the combined LIFE provisions include everyone who has "filed with the Attorney General a written claim of class membership", that is all registered class members, not only those who have been issued employment authorization pursuant to a screening that did not reliably distinguish between potentially meritorious and non-meritorious applications.

We understand that several other class action lawsuits are still pending in the federal courts challenging other INS interpretations of the 1986 adjustment provisions. The precise posture of one of these cases, *Perales v. Thornburgh*, came to our attention after the legislation had been finalized. We understand that a class of about 200 identified plaintiffs in *Perales* challenged the same regulation whose illegality the INS has conceded in *Zambrano*. We would encourage the Attorney General to provide a just resolution for the *Perales* class members in light of the legislation enacted today.

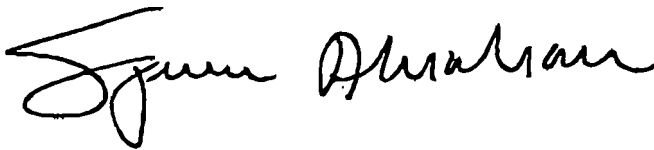
Other cases that have come to our attention, such as *Proyecto San Pablo v. INS*, and *Immigrant Assistance Project v. INS*, are in a different posture from those addressed by the LIFE Act and these amendments, in that they do not involve regulations that INS has conceded were illegal. At the same time, however, it is now almost 2001, that is, almost 15 years after the enactment of IRCA, and these cases remain unresolved. We encourage the plaintiffs and the Attorney General to explore the possibility of settling these cases and bringing to an end the years of bitter and costly litigation. Nothing in this legislation is intended to preclude this option, or to preclude the Attorney General from resolving any other IRCA adjustment applications on the merits.

In that connection, we also note that when the 1986 legalization program was enacted, the Attorney General, pursuant to section 245A of the INA, was authorized to work in conjunction with voluntary organizations and other qualified State, local and community organizations to broadly disseminate information about the legalization program. The INS helped provide funding to these organizations to assist with the outreach effort, as well as with the preparation and submission of the applications for adjustment of status. A similar outreach campaign should be conducted to disseminate information about the opportunity to apply for adjustment of status under this Act. As noted above, almost 15 years have elapsed since the original legalization program was enacted, therefore the need to publicize the resolution of these issues reached by the LIFE Act and amendments thereto is critical to ensure that eligible persons are notified and have an opportunity to obtain the benefits of this Act. Moreover, nothing in the Act should be construed to preclude the Attorney General from providing funding to organizations qualified and experienced in the preparation and submission of adjustment applications.

Third, the amendments clarify that the spouses and unmarried children of the beneficiaries of Section 1104 of the LIFE Act are eligible for the Family Unity provisions of the Immigration Act of 1990. By enacting this provision, our objective is to ensure that these family members are treated in the same manner as the family members of those who adjusted their status under IRCA.

In addition, the amendments address two, more technical issues. Section 1104 LIFE Act applicants, as well as beneficiaries under the Nicaraguan Adjustment and Central American Relief Act (NACARA) and the Haitian Refugee Immigrant Fairness Act (HRIFA) are made eligible for certain waivers of grounds of inadmissibility. These waivers are ordinarily available only to persons who are outside the U.S. The amendments to the LIFE Act allow the covered individuals to apply for these waivers in the U.S.

Finally, the LIFE amendments clarify that section 241(a)(5) of the INA which bars anyone who has been ordered removed and who subsequently reenters the U.S. from obtaining any relief under the INA. Because adjustment under section 245A, NACARA, and HRIFA is not "relief under" the Act, LIFE amendments specify that this bar does not apply to LIFE section 1104 beneficiaries, or NACARA or HRIFA applicants.



Spencer Abraham
Chairman
Subcommittee on Immigration



Edward Kennedy
Ranking Member
Subcommittee on Immigration



Esther_Olavarria@judiciary.senate.gov (Esther Olavarria)

12/14/2000 02:31:23 PM

Record Type: Record

To: See the distribution list at the bottom of this message

cc:

Subject: Fwd:PDF Version of our project from this morning

Final language

Forward Header

Subject: PDF Version of our project from this morning

Author: "Fleishman; Susan" <SFleishman@holc.house.gov>

Date: 12/14/2000 2:05 PM

<<LIFEAMD_002.PDF>>

Susan

Susan E. Fleishman

Office of the Legislative Counsel

U.S. House of Representatives

Phone: (202) 225-6060

Fax: (202) 225-3437

Mail to: sfleishman@holc.house.gov

<!DOCTYPE HTML PUBLIC "-//W3C//DTD HTML 3.2//EN">

<HTML>

<HEAD>

<META HTTP-EQUIV="Content-Type" CONTENT="text/html; charset=iso-8859-1">

<META NAME="Generator" CONTENT="MS Exchange Server version 5.5.2650.12">

<TITLE>PDF Version of our project from this morning</TITLE>

</HEAD>

<BODY>

<P> <<LIFEAMD_002.PDF>>

</P>

<P><I>Susan</I>

<I>*****</I>

Susan E. Fleishman

Office of the Legislative Counsel

U.S. House of Representatives

Phone: (202) 225-6060

Fax: (202) 225-3437

Mail to: sfleishman@holc.house.gov
</P>

</BODY>
</HTML>

Received: from exchange.house.gov ([143.231.149.3]) by mailexch.senate.gov with SMTP

(IMA Internet Exchange 3.11) id 001362A3; Thu, 14 Dec 2000 14:05:31 -0500

Received: by EXCHANGE with Internet Mail Service (5.5.2650.21)

id <X19NC4SR>; Thu, 14 Dec 2000 14:05:43 -0500

Message-ID: <659A59B479FFD211992300A0C9ED7450A76ECE@EXCHANGE>

From: "Fleishman, Susan" <SFleishman@holc.house.gov>

To: "George.Fishman@mail.house.gov" <George.Fishman@mail.house.gov>,

"Lee_Otis@judiciary.senate.gov" <Lee_Otis@judiciary.senate.gov>,

"Ries, Lora" <Lora.Ries@mail.house.gov>,

"esther_olavarria@judiciary.senate.gov"

<esther_olavarria@judiciary.senate.gov>

Subject: PDF Version of our project from this morning

Date: Thu, 14 Dec 2000 14:05:34 -0500

Return-Receipt-To: "Fleishman, Susan" <SFleishman@holc.house.gov>

MIME-Version: 1.0

X-Mailer: Internet Mail Service (5.5.2650.21)

Content-Type: multipart/mixed;



- LIFEAMD_002.PDF

Message Sent To:

aarti.kohli@mail.house.gov
alejandro.perez@mail.house.gov
Irene Bueno/WHO/EOP
patricia.a.first@usdoj.gov
philip.b.busch@usdoj.gov
scott.deutchman@mail.house.gov
andrea_larue@daschle.senate.gov (andrea larue)

1 **TITLE ____—LIFE ACT**
2 **AMENDMENTS**

3 **SEC. ____01. SHORT TITLE.**

4 This title may be cited as the “LIFE Act Amend-
5 ments of 2000”.

6 **SEC. ____02. SUBSTITUTION OF ALTERNATIVE ADJUSTMENT**
7 **PROVISION.**

8 (a) EXTENDED APPLICATION OF SECTION 245(i).—

9 (1) IN GENERAL.—Paragraph (1) of section
10 245(i) of the Immigration and Nationality Act (8
11 U.S.C. 1255(i)) is amended—

12 (Λ) in subparagraph (Λ), by striking
13 “and” at the end;

14 (B) in subparagraph (B)(i), by striking
15 “January 14, 1998” and inserting “April 30,
16 2001”;

17 (C) in subparagraph (B), by adding “and”
18 at the end; and

19 (D) by inserting after subparagraph (B)
20 the following new subparagraph:

21 “(C) who, in the case of a beneficiary of a peti-
22 tion for classification, or an application for labor
23 certification, described in subparagraph (B) that was
24 filed after January 14, 1998, is physically present in



1 the United States on the date of the enactment of
2 the LIFE Act Amendments of 2000;”.

3 (2) MODIFICATION IN USE OF FUNDS.—Para-
4 graph (3)(B) of such section is amended by inserting
5 before the period the following: “, except that in the
6 case of fees attributable to applications for a bene-
7 ficiary with respect to whom a petition for classifica-
8 tion, or an application for labor certification, de-
9 scribed in paragraph (1)(B) was filed after January
10 14, 1998, one-half of such remaining portion shall
11 be deposited by the Attorney General into the Immi-
12 gration Examinations Fee Account established under
13 section 286(m)”.

14 (b) CONFORMING AMENDMENTS.—

15 (1) Subsection (m) of section 245 of the Immi-
16 gration and Nationality Act, as added by section
17 1102(c) of the Legal Immigration Family Equity
18 Act, is repealed.

19 (2) Section 245 of the Immigration and Nation-
20 ality Act, as amended by section 1102(d)(2) of the
21 Legal Immigration Family Equity Act, is amended
22 by striking “or (m)” each place it appears.



1 SEC. ____03. MODIFICATION OF SECTION 1104 ADJUSTMENT
2 PROVISIONS.

3 (a) INCLUSION OF ADDITIONAL CLASS.—Section
4 1104(b) of the Legal Immigration Family Equity Act is
5 amended—

6 (1) in paragraph (1), by striking “or” at the
7 end;

8 (2) in paragraph (2), by striking the period at
9 the end and inserting “; or”; and

10 (3) by adding at the end the following new
11 paragraph:

12 “(3) *Zambrano v. INS*, vacated sub nom. *Immi-*
13 *gration and Naturalization Service v. Zambrano*,
14 509 U.S. 918 (1993).”.

15 (b) CONFORMING APPLICATION OF CONSENT PROVI-
16 SION.—Section 1104(c) of the Legal Immigration Family
17 Equity Act is amended by adding at the end the following
18 new paragraph:

19 “(10) CONFORMING APPLICATION OF CONSENT
20 PROVISION.—In addition to the waivers provided in
21 subsection (d)(2) of such section 245A of the *Immi-*
22 *gration and Nationality Act*, the Attorney General
23 may grant the alien a waiver of the grounds of inad-
24 missibility under subparagraphs (A) and (C) of sec-
25 tion 212(a)(9) of such Act (8 U.S.C. 1182(a)(9)). In
26 granting such waivers, the Attorney General shall

1 use standards used in granting consent under sub-
2 paragraphs (A)(iii) and (C)(ii) of such section.”.

3 (c) INAPPLICABILITY OF REMOVAL ORDER REIN-
4 STATEMENT.—Section 1104 of such Act is further
5 amended—

6 (1) by redesignating subsection (g) as sub-
7 section (h); and

8 (2) by inserting after subsection (f) the fol-
9 lowing new subsection:

10 “(g) INAPPLICABILITY OF REMOVAL ORDER REIN-
11 STATEMENT.—Section 241(a)(5) of the Immigration and
12 Nationality Act shall not apply with respect to an alien
13 who is applying for adjusmtent of status under this sec-
14 tion.”.

15 **SEC.____04. APPLICATION OF FAMILY UNITY PROVISIONS**
16 **TO SPOUSES AND UNMARRIED CHILDREN OF**
17 **CERTAIN LIFE ACT BENEFICIARIES.**

18 (a) IMMIGRATION BENEFITS.—Except as provided in
19 subsection (d), in the case of an eligible spouse or child
20 (as described in subsection (b)), the Attorney General—

21 (1) shall not remove the alien on a ground spec-
22 ified in paragraph (1)(A), (1)(B), (1)(C), or (3)(A)
23 of section 237(a) of the Immigration and Nationality
24 Act (8 U.S.C. 1227(a)), other than so much of para-
25 graph (1)(A) of such section as relates to a ground



1 of inadmissibility described in paragraph (2) or (3)
2 of section 212(a) of such Act (8 U.S.C. 1182(a));
3 and

4 (2) shall authorize the alien to engage in em-
5 ployment in the United States during the period of
6 time in which protection is provided under para-
7 graph (1) and shall provide the alien with an “em-
8 ployment authorized” endorsement or other appro-
9 priate document signifying authorization of employ-
10 ment.

11 (b) ELIGIBLE SPOUSES AND CHILDREN.—For pur-
12 poses of this section, the term “eligible spouse or child”
13 means an alien who is the spouse or unmarried child of
14 an alien described in section 1104(b) of the Legal Immi-
15 gration Family Equity Act if the spouse or child—

16 (1) entered the United States before December
17 1, 1988; and

18 (2) resided in the United States on such date.

19 (c) PROCESS FOR RELIEF FOR ELIGIBLE SPOUSES
20 AND CHILDREN OUTSIDE THE UNITED STATES.—If an
21 alien has obtained lawful permanent resident status under
22 section 1104 of the Legal Immigration Family Equity Act
23 and the alien has an eligible spouse or child who is no
24 longer physically present in the United States, the Attor-
25 ney General shall establish a process under which the eligi-



1 ble spouse or child may be paroled into the United States
2 in order to obtain the benefits of subsection (a) unless the
3 Attorney General finds that the spouse or child would be
4 inadmissible or deportable on any ground, other than a
5 ground for which the alien would not be subject to removal
6 under subsection (a)(1). An alien so paroled shall not be
7 treated as paroled into the United States for purposes of
8 section 201(c)(4) of the Immigration and Nationality Act
9 (8 U.S.C. 1151(c)(4)).

10 (d) EXCEPTION.—An alien is not eligible for the ben-
11 efits of this section if the Attorney General finds that—

12 (1) the alien has been convicted of a felony or
13 three or more misdemeanors in the United States; or

14 (2) the alien is described in section
15 241(b)(3)(B) of the Immigration and Nationality
16 Act (8 U.S.C. 1231(b)(3)(B)).

17 (e) APPLICATION OF DEFINITIONS.—Except as oth-
18 erwise specifically provided in this section, the definitions
19 contained in the Immigration and Nationality Act shall
20 apply in the administration of this section.

21 **SEC. ____05. MISCELLANEOUS AMENDMENTS TO VARIOUS**
22 **ADJUSTMENT AND RELIEF ACTS.**

23 (a) NICARAGUAN ADJUSTMENT AND CENTRAL
24 AMERICAN RELIEF ACT.—



(1) IN GENERAL.—Section 202(a) of the Nicaraguan Adjustment and Central American Relief Act is amended—

(A) by redesignating paragraph (2) as paragraph (3); and

(B) by inserting after paragraph (1) the following new paragraph:

“(2) RULES IN APPLYING CERTAIN PROVISIONS.—In the case of an alien described in subsection (b) or (d) who is applying for adjustment of status under this section—

“(A) the provisions of section 241(a)(5) of the Immigration and Nationality Act shall not apply; and

“(B) the Attorney General may grant the alien a waiver of the grounds of inadmissibility under subparagraphs (A) and (C) of section 212(a)(9) of such Act.

In granting waivers under subparagraph (B), the Attorney General shall use standards used in granting consent under subparagraphs (A)(iii) and (C)(ii) of such section 212(a)(9).”.

(2) PERMITTING MOTION TO REOPEN.—Notwithstanding any time and number limitations imposed by law on motions to reopen exclusion, re-



1 removal, or deportation proceedings (except limitations
2 premised on an alien's conviction of an aggravated
3 felony (as defined by section 101(a) of the Immigra-
4 tion and Nationality Act)), a national of Cuba or
5 Nicaragua who has become eligible for adjustment of
6 status under the Nicaraguan Adjustment and Cen-
7 tral American Relief Act as a result of the amend-
8 ments made by paragraph (1), may file one motion
9 to reopen exclusion, deportation, or removal pro-
10 ceedings to apply for such adjustment under that
11 Act. The scope of any proceeding reopened on this
12 basis shall be limited to a determination of the
13 alien's eligibility for adjustment of status under that
14 Act. All such motions shall be filed within 180 days
15 of the date of the enactment of this Act.

16 (b) HAITIAN REFUGEE IMMIGRATION FAIRNESS ACT
17 OF 1998.—

18 (1) INAPPLICABILITY OF CERTAIN PROVI-
19 SIONS.—Section 902(a) of the Haitian Refugee Im-
20 migration Fairness Act of 1998 is amended—

21 (A) by redesignating paragraph (2) as
22 paragraph (3); and

23 (B) by inserting after paragraph (1) the
24 following new paragraph:



1 “(2) INAPPLICABILITY OF CERTAIN PROVI-
2 SIONS.—In the case of an alien described in sub-
3 section (b) or (d) who is applying for adjustment of
4 status under this section—

5 “(A) the provisions of section 241(a)(5) of
6 the Immigration and Nationality Act shall not
7 apply; and

8 “(B) the Attorney General may grant the
9 alien a waiver of the grounds of inadmissibility
10 under subparagraphs (A) and (C) of section
11 212(a)(9) of such Act.

12 In granting waivers under subparagraph (B), the
13 Attorney General shall use standards used in grant-
14 ing consent under subparagraphs (A)(iii) and (C)(ii)
15 of such section 212(a)(9).”.

16 (2) PERMITTING MOTION TO REOPEN.—Not-
17 withstanding any time and number limitations im-
18 posed by law on motions to reopen exclusion, re-
19 moval, or deportation proceedings (except limitations
20 premised on an alien’s conviction of an aggravated
21 felony (as defined by section 101(a) of the Immigra-
22 tion and Nationality Act)), a national of Haiti who
23 has become eligible for adjustment of status under
24 the Haitian Refugee Immigration Fairness Act of
25 1998 as a result of the amendments made by para-



1 graph (1), may file one motion to reopen exclusion,
2 deportation, or removal proceedings to apply for
3 such adjustment under that Act. The scope of any
4 proceeding reopened on this basis shall be limited to
5 a determination of the alien's eligibility for adjust-
6 ment of status under that Act. All such motions
7 shall be filed within 180 days of the date of the en-
8 actment of this Act.

9 (c) SECTION 309 OF IIRIRA.—Section 309 of the Il-
10 legal Immigration Reform and Immigrant Responsibility
11 Act of 1996 is amended by adding at the end the following
12 new subsection:

13 “(h) RELIEF AND MOTIONS TO REOPEN.—

14 “(1) RELIEF.—An alien described in subsection
15 (c)(5)(C)(i) who is otherwise eligible for—

16 “(A) suspension of deportation pursuant to
17 section 244(a) of the Immigration and Nation-
18 ality Act, as in effect before the title III–A ef-
19 fective date; or

20 “(B) cancellation of removal, pursuant to
21 section 240A(b) of the Immigration and Na-
22 tionality Act and subsection (f) of this section;
23 shall not be barred from applying for such relief by
24 operation of section 241(a)(5) of the Immigration



1 and National Act, as in effect after the title III-A
2 effective date.

3 “(2) ADDITIONAL MOTION TO REOPEN PER-
4 MITTED.—Notwithstanding any limitation imposed
5 by law on motions to reopen removal or deportation
6 proceedings (except limitations premised on an
7 alien’s conviction of an aggravated felony (as defined
8 by section 101(a) of the Immigration and Nation-
9 ality Act)), any alien who is described in subsection
10 (c)(5)(C)(i) and who has become eligible for can-
11 cellation of removal or suspension of deportation as
12 a result of the enactment of paragraph (1) may file
13 one motion to reopen removal or deportation pro-
14 ceedings in order to apply for cancellation of removal
15 or suspension of deportation. The scope of any pro-
16 ceeding reopened on this basis shall be limited to a
17 determination of the alien’s eligibility for cancella-
18 tion of removal or suspension of deportation. The
19 Attorney General shall designate a specific time pe-
20 riod in which all such motions to reopen are required
21 to be filed. The period shall begin not later than 60
22 days after the date of the enactment of this sub-
23 section and shall extend for a period not to exceed
24 240 days.



1 “(3) CONSTRUCTION.—Nothing in this sub-
2 section shall preclude an alien from filing a motion
3 to reopen pursuant to section 240(b)(5)(C)(ii) of the
4 Immigration and Nationality Act, or section
5 242B(c)(3)(B) of such Act (as in effect before the
6 title III–A effective date).”.

7 **SEC. ____06. EFFECTIVE DATE.**

8 This title shall take effect as if included in the enact-
9 ment of the Legal Immigration Family Equity Act.

